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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,435	08/28/2003	Paul D. Robbins	AP35301 072396.0261	7180

21003 7590 10/13/2006

BAKER & BOTTS  
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NEW YORK, NY 10112

EXAMINER

SAIDHA, TEKCHAND

ART UNIT	PAPER NUMBER
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1652

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Non-Compliant  
Amendment (37 CFR 1.121)**

Application No.

10/650,435

Examiner

Tekchand Saidha

Applicant(s)

ROBBINS ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 14 August 2006 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☒ E. Other: Claims to invention distinct from the invention originally claimed.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):  
\_\_\_\_\_

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

**TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

***Non-Responsive Reply***

1. Newly submitted claims 27-39 (filed 8/14/2006) are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 27-39 are now drawn to a transport enhancing polypeptide that enhances the CFTR channel activity (claims 27-34), or are drawn to a transport enhancing polypeptide comprising: (i) an internalizing peptide; (ii) a nucleotide binding domain 1 of human CFTR protein and (iii) a regulatory domain of a human CFTR protein which enhances CFTR channel activity (claims 35-39).

Originally elected claims 17-23 of Group I were drawn to a "CFTR polypeptide comprising amino acid sequences capable of binding to molecular chaperone and enhancing CFTR channel activity when present in a cell expressing a mutant CFTR."

Instead of a CFTR polypeptide, the new claims are directed to any transport-enhancing polypeptide which may contain the CFTR, not the subject matter of the originally elected claims.

Further, Applicants are advised to amend claims with basis in the specification. The language "A transport-enhancing polypeptide..", does not seem to be supported by paragraphs 2, 5, 31 or 36, at least, as argued by the Applicants.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 27-39 are

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withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

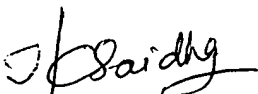
The amendment filed on 8/14/2006 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention for reasons explained above.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tekchand Saidha whose telephone number is (571) 272 0940. The examiner can normally be reached on 8.30 am - 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on (571) 272 0928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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October 2, 2006